



Development of New Rules Concerning Incorporation by Reference of Compliance Assurance Monitoring

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Update since Preliminary Adoption

Per a comment received at Second Notice of Comment Period, a sentence has been added to 326 IAC 3-8-1(a) to clarify that definitions in 40 CFR 64 apply if there is a conflict between definitions in 326 IAC 3-4-1 and 40 CFR 64 concerning compliance assurance monitoring.

Overview

This rulemaking incorporates by reference the U.S. EPA's Compliance Assurance Monitoring (CAM) rule (40 CFR 64) with an amendment that states the definitions in 40 CFR 64 will take precedent over any conflicting definitions in 326 IAC 3-4-1 concerning compliance assurance monitoring.

Citations Affected

Adds 326 IAC 3-8.

Affected Persons

Major stationary sources of air pollution that are required to obtain operating permits under Title V.

Reason or Reasons for the Rule

Incorporation of the CAM rule is necessary so that Indiana's compliance monitoring requirements are consistent with federal rule.

Economic Impact of the Rule

This rule incorporates by reference federal requirements that have been in effect since November 21, 1997. While companies may have incurred costs to comply with the federal rule at that time, the incorporation of the CAM requirements into state rule does not impose any economic impact not already required by 40 CFR 64.

Benefits of the Rule

This rule was enacted at the federal level to enhance compliance with existing regulations, thereby improving air quality.

Description of the Rulemaking Project

Section 114(a)(3) of the Clean Air Act (CAA)

required U.S. EPA to develop regulations for monitoring of certain units at major sources that are required to obtain permits pursuant to 40 CFR Part 70 (Title V). U.S. EPA issued its final rule, Compliance Assurance Monitoring, 40 CFR Part 64, on October 22, 1997 (62 FR 54900). This federal regulation applies to Title V sources and contains a compliance schedule for compliance monitoring under 40 CFR 64.

The federal rule includes monitoring design criteria, submittal requirements and deadlines, approval and operation of monitoring, quality improvement plan requirements, and reporting and recordkeeping requirements.

Subject to certain exemptions, the new regulations require owners or operators of Title V sources to conduct monitoring that satisfies particular criteria established in the rule to provide a reasonable assurance of compliance with applicable requirements under the CAA. Monitoring focuses on emissions units that rely on pollution control device equipment to achieve compliance with applicable standards. Though the federal regulations also provide procedures for coordinating the new monitoring requirements with Title V permitting, the revisions to 40 CFR 70 are not easily added to Indiana's rule as an incorporation by reference. Therefore, those revisions will be addressed in a future state rulemaking concerning Indiana's permitting program.

Indiana has authority under 326 IAC 2-7-5(1) (Part 70 Permit Program - Permit Content) to incorporate the federal CAM requirements as "applicable requirements".

This new rule will move the specific authority for implementing CAM from 40 CFR to 326 IAC.

Scheduled Hearings

First Public Hearing: December 7, 2005, Conference Center Room A, Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana.

Second Public Hearing: March 1, 2006, Conference Center Room A, Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The new rules are an incorporation by reference of federal rules.

Rulemaking Process

The first step in the rulemaking process is publication of one of three types of notices in the *Indiana Register*. The first type of notice is a first notice of comment period. This rulemaking was initiated with a first notice. The first notice of comment period includes a discussion of issues and opens a first comment period. A second notice is then published which contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The second type of notice is a section 7 notice. A section 7 notice contains a determination by the commissioner under IC 13-14-9-7 that only one comment period is required. It contains the commissioner's determination and findings, the draft rule, a request for written comments, and a notice of first meeting/hearing. The third type of notice is a

section 8 notice. A section 8 notice contains a determination by the commissioner under IC 13-14-9-8 that no public comment periods are required. It contains the commissioner's determination and findings, the draft rule and a notice of first meeting/hearing. In each case the Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Christine Pedersen, Rule Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).